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Hearing on "Harbor Maintenance Funding and Maritime Tax Issues"

Oversight Subcommittee and Select Revenue Measures Subcommittee
House Ways and Means Committee
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Since its inception, the Harbor Maintenance Tax (HMT) has served an important function for our nation's freight system. It is a key tool for maintaining the federal shipping channels serving our seaports. This tool is all the more valuable because it allows us to meet this challenge through revenue generated by those who use the system.

Yet it is very rare for any policy to work exactly as intended 25 years later, and the HMT is no exception. Some unforeseen shortcomings have emerged since 1986, and some problems that *were* anticipated have become more significant over the years. In some cases these shortcomings are actually harming US ports. After two and a half decades, it is time we make some much-needed adjustments.

Port of Seattle supports the RAMP Act

The first problem I want to discuss is the fact that the US is not fully spending the HMT revenue it collects. Congress appropriates only about half of annual HMT revenue toward its intended purpose. The balance has been applied to other federal spending even though US ports still have significant unfunded dredging needs. This is not only unfair; it also puts the HMT at risk of a challenge by trading partners.

If shippers must pay a fee to use our ports, these funds should support that use. The Port of Seattle and the other major West Coast container ports support the RAMP Act, which would ensure full utilization of the Harbor Maintenance Trust Fund.

Short Sea Shipping Act

I also would like to address another piece of legislation being discussed today, the Short Sea Shipping Act. As currently constructed, the HMT is preventing marine transportation from being a viable option for domestic freight moves. We understand the interconnectedness of the economies of Midwestern states with the neighboring Canadian provinces to the north. I sympathize with the desire to eliminate the double taxation on short sea shipping in the Great Lakes for US-Canada trade.

We can support a policy that limits the exemption to a more traditional definition of the St Lawrence Seaway that extends only to Sept-Îles, Quebec. But we cannot support the policy if the definition is expanded to include Nova Scotia. I know that many other ports agree with us. Extending the exemption to Nova Scotia would not significantly increase the volume of maritime trade between the US and Canada. Rather, it could have the effect of encouraging shippers to utilize the Port of Halifax and the planned port at Melford, Nova Scotia for the transshipment of Asian and European cargo at the expense of US East Coast ports. In effect, it would expand the HMT advantage Canadian ports already enjoy for marine containers that enter the US at land border crossings.

US policy should be neutral as it relates to the cost of importing non-NAFTA intermodal containers into the US, regardless of mode of arrival.

HMT land border loophole

This leads me to what is our most serious concern about the HMT, something that is increasingly having a detrimental impact on all US ports. Because the HMT does not apply to cargo that is moved through non-US ports and then over a land border into the US, the tax encourages shippers to divert cargo to Canadian or Mexican ports in order to avoid paying the HMT.

This unintended consequence is something the authors of the Water Resources Development Act of 1986 predicted could become a problem and sought to avoid. The original legislation required a study be undertaken as often as necessary to analyze the effects of the new policy. Specifically, the provision sought to determine whether the HMT contributed to cargo diversion to foreign seaports.

While a study probably would not have found cargo diversion to be an issue in 1987, today such a study would find the HMT is indeed encouraging shippers to avoid US ports. This is why West Coast ports were pleased to hear the Federal Maritime Commission announce that it would launch an inquiry into the matter last fall. The Port of Seattle's response to the FMC inquiry can be found here: www.fmc.gov/assets/1/Documents/11-19-comments%20of%20Port%20of%20Seattle.pdf. I would like to take this opportunity to summarize some of the key points from our response.

Changed landscape with new competitive threats

The first question people usually ask is, if the HMT has existed since 1986, why is it so urgent that we deal with it now?

The question has a simple answer: The shipping industry has changed a lot since the 80's, and we are facing a new competitive landscape. The change most relevant to today's discussion is the emergence of new port infrastructure in Mexico and Canada. These ports have given shippers the option to route cargo through foreign gateways that did not exist before. As a result, the land border loophole in the HMT has become a factor in port competitiveness.

The opening of Prince Rupert's container terminal in 2007 marked the first time a foreign port adopted a business model based on targeting US-bound cargo. Prince Rupert has already captured market share from US West Coast ports, and they have ambitious expansion plans. Many East Coast ports share West Coast ports' concerns about the land border loophole because Canada intends to replicate Prince Rupert's success with a new port at Melford, Nova Scotia.

Mexico's ports also are growing and plan to challenge US ports for US-bound cargo.

US ports are no strangers to competition, and we are willing and able to meet this challenge head on. But we do so with one hand tied behind our back: Because fees are not applied equally, US law is giving our new competitors a generous head start.

The role of the HMT in cargo diversion

Another common question is, does the HMT really affect cargo routing?

No one disputes that cost is one of the most important elements in a shipper's cargo routing decisions. While the HMT is only one of several cost factors, it is significant enough to influence trade flows.

In 2007, the Washington State Legislature commissioned a study to determine how a proposed container fee would affect Puget Sound cargo volumes. This study concluded that a $60 fee per forty-foot container would cut import volumes by 30%. A $150 fee would cut traffic in half.

The HMT averages $84 per forty-foot container nationally, significantly higher than the amount the Legislature's study predicted would result in major cargo diversion. But because the tax depends on the value of the cargo, it can be higher. This is why the Canadian transportation industry often references HMT savings of $200 or more, well above the level at which the study predicted drastic shifts in market share.

Canadian marketing of their HMT advantage

It is telling to note that in recognition of the significance of the HMT as a factor in cargo routing, the Canadian transportation industry proactively markets their HMT cost advantage. We have witnessed presentations by Canadians demonstrating how importers can save millions of dollars by moving their cargo through Canada instead of through the US because they can avoid the HMT.

The land border loophole reduces HMT revenue.

In addition to its detrimental impact on US port competitiveness, another reason to address the land border loophole is because every container that is diverted to a non-US port reduces Harbor Maintenance Trust Fund revenue. This leak in the trust fund will become more serious as cargo diversion increases.

Congress should level the playing field

As this committee continues its review of maritime issues, West Coast ports hope a structure can be created that allows US ports to compete on a level playing field. Federal policy should be modified to ensure equal treatment of all US-bound containers regardless of mode of arrival in the US.

Our ports are a building block of the US economy, linking our businesses with international markets and supporting millions of jobs across the nation. This includes jobs in the transportation sector and many millions more with importers and exporters who depend on America's ports. For agricultural exporters, healthy US ports can make the difference in whether their products are competitive in global markets. Manufacturers also depend on highly efficient, reliable ports to get their goods to market and to take advantage of the just-in-time processes that have become common practice in their industries.

The topic we are addressing today is an important one, and I applaud Chairman Boustany and Chairman Tiberi for calling this hearing. Whether or not we succeed in fixing the HMT will have implications for the ability of US ports to continue to survive and thrive in an increasingly competitive global business environment. Thank you for the opportunity to submit this written testimony.